tion of libellous matter. Contribution is generally allowed between negligent but unconscious wrongdoers. *Armstrong Co.* v. *Clarion Co.*, 66 Pa. 218. See 12 HARV. L. REV. 176. *A fortiori*, contracts to indemnify non-negligent unconscious wrongdoers will be supported. *Stone* v. *Hooker*, 9 Cow. (N. Y.) 154. And in construing a contract of indemnity no presumption will be indulged that a contract contrary to public policy was intended. *Babcock* v. *Terry*, 97 Mass. 482. So, such an agreement between an editor and a printer who are *bona fide* may be construed as one to indemnify for all expenses incurred in groundless suits. See *Babcock* v. *Terry*, *supra*. And it is submitted that the action on the indemnity contract should not cease to be maintainable because, in a doubtful case, the court support the jury in finding that there was an actionable libel.

MALICIOUS PROSECUTION — PROBABLE CAUSE — CONVICTION SUBSEQUENTLY REVERSED AS EVIDENCE. — The defendant instituted criminal proceedings against the plaintiff, who pleaded guilty and was convicted; but the judgment was reversed on appeal. The plaintiff then brought an action for malicious prosecution. *Held*, that the conviction is conclusive evidence of probable cause for instituting the criminal proceedings. *Smith* v. *Thomas*, 62 S. E. 772 (N. C.).

In an action for malicious prosecution the plaintiff must prove that there was no probable cause for instituting the criminal proceedings. *Gurley* v. *Tomkins*, 17 Colo. 437. Many courts hold that a judgment of conviction, although subsequently reversed, is *prima facie* evidence of probable cause. *Nicholson* v. *Sternberg*, 61 N. Y. App. Div. 51. But the weight of authority supports the principal case in holding that a conviction in the original court is conclusive evidence of probable cause. *Parker* v. *Huntington*, 73 Mass. 36. There is some authority for the rule that such conviction is not evidence of probable cause when for any reason it carries no probative force. *Nehr* v. *Dobbs*, 47 Neb. 863. But it is generally considered evidence unless secured by fraud or perjury. *Gilmore* v. *Martin*, 115 Ill. App. 46; *Crescent City Live Stock Co.* v. *Butchers' Union Slaughter-House Co.*, 120 U. S. 141. Logically, however, the fact of a conviction subsequently reversed should be evidence in such an action only so far as it tends to establish that the defendant had reasonable grounds for instituting the criminal proceedings and an honest belief in the guilt of the accused at the time such proceedings were commenced. For it is upon these tests that the defendant's case depends, not upon the evidence produced at the trial. *Harkrader* v. *Moore*, 44 Cal. 144.

MARRIAGE — NULLIFICATION — PERMANENT ALIMONY. — The defendant went through a form of marriage with the plaintiff, which would have been valid if the former had not already been married. Thereafter the plaintiff materially helped him in acquiring property. The trial court annulled the marriage, and granted to the plaintiff an undivided fourth interest in the defendant's realty. *Held*, that it is proper to dispose of the defendant's property in the same way as in a case of divorce. *Buckley* v. *Buckley*, 96 Pac. 1079 (Wash.).

In awarding alimony, it is proper to consider not only the damages suffered by reason of the marriage, but also the amount of the husband's property, his ability to earn money, and the station in which he ought to maintain the wife if the marriage relation were continued. See *Pauly* v. *Pauly*, 69 Wis. 419. Alimony is awarded on this comprehensive basis, because it is regarded as compensation for the loss of the wife's legal rights under the marriage contract. Some courts, however, disregard this reason, and award alimony in annulling marriages which are void *ab initio*. *Strode* v. *Strode*, 3 Bush (Ky.) 227. *Contra*, *Stewart* v. *Vandervort*, 34 W. Va. 524. Such decisions are unjustifiable, for a void marriage confers none of the legal rights of marriage upon the parties. See *Smith* v. *Smith*, 5 Oh. St. 32; *Emerson* v. *Shaw*, 56 N. H. 418. In the principal case the marriage is void, but the plaintiff should have compensation for the defendant's wrong. *Werner* v. *Werner*, 59 Kan. 399. The compensation should, however, be given as in tort for fraud or deceit, rather than on the broader theory of alimony. See *Pollock* v. *Sullivan*, 53 Vt. 507; *Withee* v.

Brooks, 65 Me. 14. Though the decision may be correct in result, the principle upon which it is decided is clearly unsound.

MORTGAGES — TRANSFER OF RIGHTS AND PROPERTY — ASSIGNMENT BY QUITCLAIM DEED. — The defendant, a holder of a purchase-money mortgage, quitclaimed all his right, title, and interest in the land to the plaintiff. He then foreclosed and purchased the premises. The plaintiff sued for a conveyance. *Held*, that the defendant must convey. *Gottlieb* v. *City of New York*, 112 N. Y. Supp. 545.

To constitute an effective assignment of a mortgage the debt as well as the mortgage must be transferred. *Merritt* v. *Bartholick*, 36 N. Y. 44. In the jurisdictions holding the mortgage a mere chattel interest, security for the debt, a conveyance by the mortgagee of all interest in the land is a nullity and transfers neither mortgage nor debt. *Hill* v. *Edwards*, 11 Minn. 22; *Nagle* v. *Macy*, 9 Cal. 426. Even in states retaining the common law theory that the mortgage passes the legal title subject to defeasance, a quitclaim deed by a mortgagee not in possession does not *per se* accomplish an assignment. *Ellison* v. *Daniels*, 11 N. H. 274. But when the intention to pass the mortgage debt plainly appears such conveyance is held an assignment. *Johnson* v. *Leonards*, 68 Me. 237. See *Hill* v. *Edwards*, *supra*. And a quitclaim deed, though passing no legal estate, may operate as an equitable assignment of the mortgage debt to the extent of the purchase money paid. *McSorley* v. *Larissa*, 100 Mass. 270. See *Lunt* v. *Lunt*, 71 Me. 377. In the main case whether there has been a legal or an equitable assignment the court reaches a correct result in holding the mortgagee a trustee for the plaintiff of the land purchased.

MORTGAGES — TRANSFER OF RIGHTS AND PROPERTY — DESTRUCTION OF DEFEASANCE AGREEMENT TO CUT OFF RIGHT OF REDEMPTION. — The plaintiff executed and delivered to the defendant an absolute deed as security for indebtedness. Simultaneously the defendant delivered to the plaintiff a defeasance agreement, but neither instrument referred to the other. Subsequently, for good consideration, the instrument of defeasance was surrendered to the defendant and destroyed with the intention of making the deed absolute and cutting off the equity of redemption. The defendant sold the property described in the deed and the plaintiff brought an action to have the deed declared a mortgage and for an accounting. *Held*, that the deed is a mortgage and that the plaintiff may redeem and have an accounting. *Conover* v. *Palmer*, 60 N. Y. Misc. 241. See NOTES, p. 295.

REAL PROPERTY — MERGER — ESTATES HELD IN DIFFERENT RIGHTS. — The husband of a holder of a term for years bought the reversion in fee. *Held*, that the term does not merge in the reversion. *Hurley* v. *Hurley*, 42 Ir. L. T. 253. (Ire., Ct. App., Nov. 16, 1908). See NOTES, p. 298.

RULE AGAINST PERPETUITIES — UNCERTAINTY — POSTPONEMENT OF FUTURE GIFT "AS LONG AS LEGALLY POSSIBLE." — A testator gave the residue of his estate to a trustee "for as long a period as is legally possible," to make annual payments to forty-two annuitants and (with three exceptions) to their heirs, and at the end of that time to divide the trust fund equally among the persons then entitled to the annuities. *Held*, that the gift over is valid and vests twenty-one years after the death of the last surviving annuitant. *Fitchie* v. *Brown*, U. S. Sup. Ct., Dec. 7, 1908.

This decision affirms the decision of the Supreme Court of Hawaii. For a discussion of the case in the lower court, see 20 HARV. L. REV. 220.

SALES — TITLE OF GOODS SUBJECT TO BILLS OF LADING — EFFECT OF INDORSEMENT WITHOUT INTENT TO PASS TITLE. — A seller of goods consigned them to X, and on their arrival they were seized by an execution creditor of the seller. Subsequently, X indorsed the bill of lading to Y, an agent, without value. Y sued the sheriff in trover. *Held*, that he cannot recover. *Burgos* v. *Nascimento*, 53 Sol. J. 60 (Eng., H. L., Nov. 18, 1908).